Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Rural Digital Opportunity Fund	)	**WC Docket No. 19-126**
	)	
Connect America Fund	)	**WC Docket No. 10-90**
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COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the *NPRM* in the above-captioned proceedings[1] seeking comment on implementation of the Rural Digital Opportunity Fund (RDOF), a new Universal Service Fund (USF) high-cost support mechanism to bring broadband service at minimum speeds of 25/3 Mbps to millions of unserved and underserved Americans.

I. INTRODUCTION AND SUMMARY

It long has been common knowledge that the available tools anywhere to comprehensively track where broadband has and has not been deployed are lacking.[2] To put an accent on the point, one month ago ITTA, along with its partners in creating a Broadband Serviceable Location Fabric (Fabric), filed with the Commission results of a two-state, pilot

[1] *Rural Digital Opportunity Fund; Connect America Fund*, Notice of Proposed Rulemaking, FCC 19-77 (Aug. 2, 2019) (*NPRM*).

[2] *See, e.g., Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79, 2, 5, paras. 1, 10 (Aug. 6, 2019) (*DODC Order and/or Second FNPRM*) ("The census-block level fixed broadband service availability reporting the Commission currently requires . . . has made it difficult for the Commission to direct funding to the 'gaps' in broadband coverage . . . It has become increasingly clear that the fixed . . . broadband deployment data collected on the Form 477 are not sufficient to support the specific imperative of [the Commission's] USF policy goals.").

project testing the granularity, accuracy, and comprehensiveness of the Fabric, and finding a staggering level of disparity both in the number and geolocation of actual locations identified by the Fabric as compared to those reported by entities serving those areas, who are required to report at the census block level.[3]

One year ago, the Wireline Competition Bureau released a public notice seeking comment on procedures to identify and resolve so-called location discrepancies associated with the Connect America Fund Phase II (CAF II) auction, where the model-determined number of locations a CAF II auction support recipient is obligated to be capable to serve in a certain area eclipses the actual number of locations in that area.[4] This was followed several months later by a public notice seeking comment on similar issues associated with the rate-of-return carrier Alternative Connect America Cost Model (A-CAM) support mechanism.[5] These proceedings follow numerous overt acknowledgements by the Commission that these discrepancies exist and tacit acknowledgements that they are becoming increasingly commonplace.[6]

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[3] Letter from Jonathan Spalter, President & CEO, USTelecom, Genevieve Morelli, President, ITTA, and Claude Aiken, President & CEO, WISPA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 19-195, 11-10, 10-90, and 19-126, Attach., Broadband Mapping Initiative Proof of Concept; Summary of Findings, at 7 (filed Aug. 20, 2019) (among key Pilot findings, 48% of rural census block Fabric location counts do not match currently used estimates of location counts, and 61% of rural Pilot provided geocoded locations are not at the correct structure location).

[4] *See generally Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Locations Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, Public Notice, 33 FCC Rcd 8620 (WCB 2018).

[5] *See generally Wireline Competition Bureau Issues Corrected Alternative Connect America Cost Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, Public Notice, DA 19-504 (WCB June 5, 2019). The CAF II auction as well as earlier CAF-supported deployment programs relied on the Connect America Cost Model (CAM) to determine the number of locations the support recipient is obligated to serve. The A-CAM, in turn, was largely based on the CAM.

[6] *Compare, e.g., Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1389-90, para. 25 (2018) (*CAF II Auction Reconsideration Order*) ("While parties claiming that there are discrepancies between the [Connect America Cost Model (CAM)] and the facts on the ground have not demonstrated that the data and analyses they are relying on are necessarily more

(continued…)

Against the backdrop of this collective uncertainty regarding where broadband has and has not been deployed, as well as how that compares with predictive models of how many locations to which it should be deployed -- which are based on information nearly a decade old[7] -- the Commission has proposed to establish the RDOF, with a 10-year budget of more than $20 billion to be allocated via reverse auction to bring broadband service at minimum speeds of 25/3 Mbps to millions of unserved and underserved Americans. ITTA and others[8] have advocated that, given the magnitude of the RDOF – not only in terms of the potential funding level at play, but also it finally being the opportunity to target support to the highest-cost, hardest-to-reach unserved and underserved locations – it is imperative that the auction have the benefit of a granular, accurate, and thorough accounting of unserved and underserved locations in eligible areas. The mapping of these locations will, in turn, lead to most effectively and efficiently targeting support where it is most needed, and fostering concrete steps towards realizing the

(Continued from previous page)
accurate than the CAM, we agree that support recipients should not be penalized if the actual facts on the ground differ from the CAM's estimates.") *with NPRM* at 11, para. 30 ("We recognize that there may be some disparity between the number of locations specified by the CAM and the 'facts on the ground.'").

[7] The CAM and A-CAM rely on 2011 U.S. Census data as its foundation for location counts. *See* CostQuest Associates, Inc., Connect America Cost Model (A-CAM), Model Methodology, A-CAM version 2.4.0 at 13-14, § 2.2 (rev. May 1, 2018), https://docs.fcc.gov/public/attachments/DOC-350679A1.pdf; *see also Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3098, 3103, paras. 25, 39 (2016); *Connect America Fund; High-Cost Universal Service Support*, Report and Order, 29 FCC Rcd 3964, 3971, para. 15 (WCB 2014).

[8] *See*, *e.g.*, Letter from Mike Saperstein, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 19-126, at 2 (filed June 24, 2019) (June 24, 2019 *Ex Parte*). *Cf. also, e.g.*, Broadband DATA Act, H.R. 4229, 116th Cong. § 3(c)(2)(B) (2019) (would require the Commission to use updated maps created using the Fabric and other sources "when making any new award of funding with respect to the deployment of broadband internet access service").

national goal of universal broadband access by all Americans.[9] ITTA has been an enthusiastic supporter of the Fabric via the Broadband Mapping Consortium (BMC), and ITTA member companies participated in the phenomenally successful pilot project which demonstrated that the Fabric, if adopted by the Commission, will timely, cost-effectively, and completely fulfill all of these locations accounting and mapping objectives.

Although the Commission recently has adopted some measures and proposed others to help effectuate these objectives,[10] it is likely to be well over a year before the fruits of those measures ripen. Normatively, the Commission would delay the RDOF auction until it has the benefit of complete information. On a macro level, the *NPRM* proposes the next best approach: conduct the auction in two phases, with the first largely auctioning areas that the Commission is reasonably certain, even without more granular deployment information that it does not currently possess, are unserved or underserved; and with the second being partially served areas where more thorough and accurate broadband mapping information is needed to target support with greater precision. ITTA supports this macro framework insofar as it balances worthwhile objectives of auctioning these areas as soon as possible to bring the benefits of broadband more expeditiously to Americans in these areas, with reserving auction of partially served areas where the Commission does not currently have granular deployment information until the complete roster of location information is available to more effectively and efficiently pinpoint where

[9] *See NPRM* at 5, para. 12; *see also, e.g.*, 47 U.S.C. §§ 254(b)(2), 1302(b); American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, § (6001)(k)(2)(D), 123 Stat. 115, 516 (2009).

[10] *See generally DODC Order and Second FNPRM*.

support needs to be allocated in such areas,[11] via the precision location information that will result from the Commission's adoption of the Fabric.[12]

ITTA generally agrees with the *NPRM* that in many respects, fashioning the RDOF auction should be guided by design of the CAF II auction.

There are, however, certain ways in and degrees to which RDOF auction procedures should be tweaked, based on the Commission's experience with the CAF II auction and other existing USF high-cost funding mechanisms. If the Commission conducts Phase I of the RDOF auction prior to adopting the Fabric, it must hold winning bidders harmless for any location discrepancies that occur between model-based locations and actual locations.[13] In addition, the Commission generally should further promote participation in the auction by adjusting the lower bound of wholly unserved census blocks eligible for Phase I of the RDOF auction to a $30 benchmark, and modifying the Letters of Credit requirement for the RDOF auction in order to make it less burdensome for auction participants and less wasteful for auction participants and the RDOF alike. And in light of continued uncertainties regarding the performance characteristics of high-latency services, the Commission should increase the weighting in the RDOF auction of proposals to deploy such services.

There are also certain *NPRM* proposals that the Commission should not adopt insofar as they will inhibit fulfillment of the Commission's goals for the RDOF auction or undermine its success. One such proposal is enforceable subscriber milestones, whose premises are flawed and

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[11] *NPRM* at 5, para. 12 ("our two-phase approach will ensure that completely unserved areas are prioritized, so that support can begin to flow quickly while we work to improve the data needed to most efficiently target support over the longer term").

[12] *See DODC Second FNPRM* at 42, para. 101 (proposing to create and integrate a broadband-serviceable location tool, such as the Fabric, into the Digital Opportunity Data Collection (DODC)).

[13] If winning bidders are not held harmless for any location discrepancies, there certainly should not be a pro rata reduction in a winning bidder's RDOF auction support.

provisions misplaced. And although ITTA supports the *NPRM*'s proposal to auction Phase I census blocks where the price cap carrier receiving model-based support is the only terrestrial provider offering 25/3 Mbps service in those blocks but has not deployed such service to all locations in those blocks, the Commission should not adopt its related proposal to remove from eligibility in the RDOF auction the locations receiving 25/3 Mbps service in those blocks.

Finally, in order to ensure the transition from CAF II model-based support to RDOF auction support does not undermine the public interest by threatening consumers with loss of service or a spike in pricing, the Commission should provide for adequate transitional support and adopt other measures to facilitate the transition.

II. THE COMMISSION LARGELY SHOULD FOLLOW THE PROCEDURES UTILIZED IN THE CAF II AUCTION

The Commission proposes to use a substantially similar reverse auction mechanism and set of procedures for the RDOF auction as it did in the CAF II auction.[14] Subject to some exceptions,[15] ITTA generally supports this proposal. Below, ITTA specifically addresses two elements that should remain unchanged vis-à-vis the CAF II auction: the RDOF auction's geographic framework, and its deployment milestones schedule.

A. Census Block Groups Remain the Appropriate Minimum Geographic Bidding Unit

The *NPRM* seeks comment on whether census block groups containing one or more eligible census blocks constitute an appropriate minimum geographic unit for bidding for the RDOF.[16] ITTA submits that they do. As the Commission stated in various iterations leading up to the CAF II auction, using census block groups properly balances "providing bidders with as much flexibility as feasible . . . to develop a bidding strategy that aligns with their intended

[14] *See NPRM* at 7, para. 19.

[15] *See infra* Secs. III, IV.

[16] *See id.* at 8, para. 21.

network expansion or construction,"[17] with avoiding the significant but unnecessary complication of the bidding process that would accompany smaller geographic areas.[18] Although a larger minimum geographic unit, such as census tracts, might be more manageable,[19] that only satisfies one side of the balancing that should inform the proper outcome here. ITTA concurs with the Commission's prior assessment that bidding at the census tract level or other geographic units larger than census block groups "could be particularly problematic for small providers that may seek to construct smaller networks or expand existing networks because a larger minimal geographic area, like a census tract or county, may extend beyond a bidder's service territory, franchise area, or license area."[20] ITTA believes that all of these rationales remain sound, and the Commission should not depart from using census block groups as the minimum geographic area for bidding in crafting the RDOF auction.

B. The Commission Should Retain the Same Deployment Milestones as the CAF II Auction

The *NPRM* proposes to adopt the same service milestones for the RDOF auction that the Commission adopted for the CAF II auction. Specifically, it proposes that RDOF support recipients complete construction and commercially offer voice and broadband service to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, and an additional 20 percent in subsequent years, culminating with 100 percent by

[17] *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238, 6241-42, paras. 12-13 (2017) (*CAF II Auction Comment Public Notice*).

[18] *See Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1437, 1525, paras. 18, 333 (2018) (*CAF II Auction Procedures Public Notice*).

[19] *See NPRM* at 8, para. 21.

[20] *CAF II Auction Comment Public Notice*, 32 FCC Rcd at 6242, para. 13.

the end of the sixth year.[21] When the Commission first adopted it relative to the statewide offers of CAF II model-based support, it explained that this approach recognizes that in performing major network upgrades, support recipients will proceed incrementally first with an overall plan, then with refined construction plans relative to particular routes, and then with working to complete construction evenly over the course of the term required for deployment. This, the Commission agreed, "more accurately reflects the real world challenges of deploying new voice and broadband-capable infrastructure."[22] ITTA concurs that this schedule continues to make sense for the reasons the Commission enunciated.

Relatedly, ITTA also emphasizes that determining compliance with deployment milestones on a state-wide basis, as the Commission will do with the CAF II auction and proposes for the RDOF auction,[23] is a critical auction design element that the Commission must retain. Not only does it provide auction winners more flexibility in fulfilling their deployment obligations while upholding the same public interest benefits of serving previously unserved or underserved consumers within a state, it also may help to dilute location discrepancy issues to some degree where one service area in a state has a location shortfall but another service area of the winning bidder in the same state has more locations than the CAM identified. The Commission should likewise apply the same approach for the RDOF auction that it will utilize for CAF II auction interim milestones, namely, that it will monitor a support recipient's overall

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[21] *See NPRM* at 10, para. 28.

[22] *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd 15644, 15658, para. 36 (2014) (*December 2014 CAF Order*).

[23] *See NPRM* at 11, para. 28.

progress in meeting its milestones in each state, rather than a support recipient's progress in meeting the requirements for each relevant performance tier and latency combination.[24]

III. THERE ARE VARIOUS WAYS IN WHICH THE COMMISSION SHOULD TWEAK ITS RDOF AUCTION PROCEDURES RELATIVE TO THE CAF II AUCTION PROCEDURES

A. The Commission Should Employ the Same Compliance Framework as the CAF II Auction but Ratchet Down Scrutiny of Geocoding of Locations

The *NPRM* proposes to apply the same deployment non-compliance measures to which all high-cost eligible telecommunications carriers (ETCs) required to meet defined service milestones are subject.[25] ITTA has no objection to applying this compliance framework to the RDOF auction. However, ITTA urges the Commission to do so in a manner that holistically recognizes a support recipient's progress in achieving its network build on the schedule dictated by the deployment milestones, rather than overemphasizes the precision of the support recipient's geocoding of locations it reports as served.

The experiences in this regard of ITTA member CenturyLink are instructive. In February 2019, CenturyLink received a letter from Commission staff stating that the Universal Service Administrative Company's (USAC) auditors declined to verify CenturyLink's compliance in four states with a prior year's deployment milestone because of purported mismatches between the geocoordinates and address information in CenturyLink's records and those it reported to USAC in the HUBB Portal. According to CenturyLink, these purported mismatches arose after CenturyLink recognized that the location information in an internal database was derived from a third-party vendor using automated geocoding tools, and the company heeded USAC's guidance that it should "clean up" such data to improve its accuracy. Doing so created a divergence between information in CenturyLink's internal systems and the location information it reported

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[24] *See CAF II Auction Procedures Public Notice*, 33 FCC Rcd at 1435, para. 15 n.25.

[25] *See NPRM* at 13, para. 36.

to USAC. In other words, CenturyLink was in compliance with the relevant milestone, but USAC's auditors found to the contrary based on a data mismatch, not based on any lack of qualifying buildout.[26] ITTA understands the need of USAC to conduct audits in order to safeguard the USF, and also is aware of ongoing efforts to improve the user experience with the HUBB Portal. Nevertheless, this misadventure illustrates that the compliance framework should be administered in a manner that emphasizes corroboration that deployment actually has occurred, rather than resulting, even if not intended as such, in a game of "gotcha."

In any event, if, as it should, the Commission adopts and implements the Fabric, it will result in accurate geocoding. As relayed above, the BMC Pilot project conclusively demonstrated the substantial inaccuracy of commercial geocoding software.[27] ITTA agrees that "the reason HUBB filers need to modify geocodes or delete locations and resubmit them with new geocodes is due to the poor quality of commercial geocoding, which is outside the control of the carriers. *Such geocoding updates do not indicate any lack of deployment or a compliance issue*."[28] While adoption and implementation of the Fabric should substantially, if not completely, cure the problem, until that occurs, the Commission should apply its compliance framework in a manner designed to answer the question of whether, as a substantive matter, deployment has occurred that meets the relevant milestone.

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[26] *See* Petition of CenturyLink for Reconsideration, WC Docket Nos. 10-90 and 14-58, at 1-4 (filed Mar. 12, 2019).

[27] *See supra* note 3; *see also, e.g.*, Letter from Mike Saperstein, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, 19-195, 11-10, at 1 (filed Sept. 4, 2019) (Sept. 4, 2019 *Ex Parte*) (the Pilot showed that "the geocodes generated by commercial geocoding software used by participating carriers are frequently more than 10 meters away from the location of the served structure").

[28] *Id.* at 2 (emphasis added).

B. If the Commission Uses the CAM to Determine Deployment Obligations, it Must Recognize that Circumstances Have Changed Over the Course of a Decade

The *NPRM* proposes to use the CAM to determine the number of locations for each area eligible for support in Phase I of the RDOF auction.[29] If the Commission uses the CAM to determine deployment obligations, it must hold winning bidders harmless for any discrepancies that ensue between model-determined locations and actual locations.

By the time Phase I of the RDOF auction occurs, the inputs into the CAM will be just short of a decade old.[30] The Commission is well aware that there are location discrepancy issues involved in the CAF II auction and A-CAM support mechanisms.[31] As the inputs on which the cost models rely become longer in the tooth, it stands to reason that the gulf between model-determined locations and actual locations may widen. With this being the case, and with the auction mechanism designed to produce a result where authorized support amounts are significantly below the auction budget,[32] the Commission should hold auction winners harmless, not reducing their authorized support, where the actual locations in the areas on which they bid fall short of the model-determined locations.

Nevertheless, if the Commission finds the hold-harmless approach unpalatable, an alternative is to conduct both Phase I and Phase II of the RDOF auction after the Commission has derived more granular and accurate location counts via measures ultimately adopted in the

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[29] *See NPRM* at 20, para. 54.

[30] *See supra* note 7.

[31] *See supra* p.2.

[32] *Id.* ("As in the CAF Phase II auction, because the sum of the reserve prices for all eligible areas in the auction exceeds the budget, bidders will have to compete across areas for the limited budget. This competition serves our universal service goals and the public interest because the support amounts that result are more cost-effective than the model-based reserve prices."). *See also id.* at 6, para. 17 (model-estimated need for CAF II auction was $5 billion, aggregate reserve prices of all areas in that auction was $6 billion, total budget was $2 billion, but sum of winning amounts was $1.49 billion).

DODC proceeding. If the Commission implements this alternative, it then should right-size reserve prices in a manner that realizes its goals of setting reserve prices high enough to promote participation and competition in the auction, but not so high as to defeat the *NPRM*'s cost-effective auction aim.[33]

C. Phase I of the RDOF Auction Should Include Wholly Unserved Census Blocks with Estimated Costs Below the Current High-Cost Benchmark

The *NPRM* proposes to include in Phase I of the RDOF auction census blocks where the CAM suggests the costs of deployment are below the high-cost threshold but deployment nonetheless has not yet occurred.[34] ITTA agrees, and urges that this be effectuated by including all wholly-unserved census blocks with a particular cost benchmark below the $52.50 per location per month high-cost threshold.[35]

To begin with, including such census blocks, which by definition are wholly unserved, fits squarely within the Commission's goals for the RDOF auction, including to "ensure that completely unserved areas are prioritized, so that support can begin to flow quickly."[36] The fact that such areas remain wholly unserved notwithstanding ostensibly lower relative costs to serve may be evidence that the model was not as effective in evaluating costs to serve these particular areas. Or, as the *NPRM* observes, broadband deployment data indicating that there are over six million locations with costs below the $52.50 benchmark that still lack broadband at 25/3 Mbps (with over half of them lacking even 10/1 Mbps) suggest that potential end-user revenue alone

[33] *See NPRM* at 20, para. 55.

[34] *See id.* at 19, paras. 51, 53. *See also id.* at 16, para. 45 (focusing on the areas eligible for Phase I of the auction).

[35] *See id.* at 19-20, para. 53. The *NPRM* also advanced the alternative of including all such census blocks that are not part of an urbanized area or an urban cluster. *See id.* at 19, para. 53.

[36] *Id.* at 5, para. 12.

has not incentivized deployment despite the CAM's predictions.[37] Regardless, the nature of the reverse auction is such that it should allocate funding to serve these areas at an efficient level commensurate with the actual relative costs involved. Therefore, including such census blocks meets the *NPRM*'s declared objectives of the RDOF auction being an efficient mechanism that prioritizes targeting investment to areas where there is currently no private sector business case to deploy broadband without assistance.[38]

As a matter of implementation, the Commission should include in the RDOF auction all wholly-unserved census blocks with a cost benchmark of $30 per location per month or above. At this level, almost all wholly-unserved census blocks in price cap carrier territories will be eligible for the RDOF auction.[39] To the extent these census blocks are overwhelmingly rural, this approach will serve the Commission's goal of bringing high-speed broadband to those without such service in rural America.[40]

The Commission also should set reserve prices based on a $30 eligibility threshold.[41] As the *NPRM* itself explains, this will incentivize providers to include these unserved census blocks in their bids, and ultimately deploy to them.[42] Doing so also would reflect a more realistic view of take rates; as discussed below, Commission data demonstrates that an assumed 70 percent

[37] *See id.* at 19, para. 51.

[38] *See id.* at 5, para. 12.

[39] Lowering the eligibility threshold to $30 per location per month presents the possibility of subsidizing 25/3 Mbps broadband deployment to at least 92.9% of unserved housing units in unserved price cap carrier census blocks. *See* June 24, 2019 *Ex Parte* at Attach., Analysis of Rural Served & Unserved Price Cap CBs.

[40] *See NPRM* at 20, para. 53.

[41] *See id.* at 21, para. 57 (proposing, if the Commission decides to lower the high-cost threshold, to set reserve prices based on the new, lower threshold).

[42] *See id.*

take rate for 25/3 Mbps service in rural areas still far exceeds reality.[43] The fact that certain census blocks below the $52.50 benchmark remain *wholly unserved* despite the CAM's prediction that potential end-user revenue would be sufficient incentive for deployment may be explained, at least in part, by the assumed take rate being too high.[44]

D. The Commission Should Modify the Letter of Credit Requirement to Make it Less Costly for RDOF Auction Winners

The *NPRM* proposes to adopt for the RDOF auction the same Letter of Credit rules as apply for the CAF II auction.[45] Specifically, before they can receive their next year's support, RDOF support recipients would be required to modify, renew, or obtain a new Letter of Credit to ensure that it is valued, at a minimum, at the total amount of money that already has been disbursed plus the amount of money to be provided in the next year, subject to certain percentage reductions based on successful achievement of deployment milestones.[46] The Letter of Credit would also be required to remain in place until USAC and the Commission verify that the support recipient has met its minimum coverage and service obligations at the end of the six-year deployment period.[47] Although ITTA appreciates the function of the Letter of Credit requirement to foster the Commission's role as steward of the USF,[48] realities of the structuring of the requirement paradoxically are conducive to winning bidders needing more support than

[43] *See infra* Sec. IV.A.

[44] *Cf. id.* at para. 56 n.108 (the $52.50 benchmark was derived from applying an average revenue per user of $75 at the 70% expected take rate).

[45] *See id.* at 28, para. 84.

[46] *See id.* at 28-29, paras. 85-86.

[47] *See id.* at 29, para. 86.

[48] *See id.* at 28, para. 84.

they would without such structuring. As such, the Commission should modify the requirement, as discussed below.[49]

Contrary to the *NPRM*'s assertion that adopting the same phase-down schedule that was used in the CAF II auction "allow[s] the value of the Letter of Credit to decrease over time,"[50] the value of the Letter of Credit escalates at least through Year 5 of support, even when the 10 percent reduction may be applied. While the value dips slightly in Year 6 when a 40 percent reduction may be applied, it is still higher than the Year 3 value, and may equal the Year 4 value. Then, because the Letter of Credit must remain in place until USAC and the Commission verify that the RDOF support recipient has met its deployment milestones and service requirements by the end of Year 6, realistically this likely will mean that the Letter of Credit must be renewed for Year 7, at which time the value will increase relative to Year 6, perhaps approaching or equaling the Year 5 value.

The bottom line is that the *increase* in Letter of Credit values over the course of time relative to earlier years of the support term negatively affects auction winners' bottom lines. During the pendency of the Letters of Credit, auction winners are paying interest on money they are not even borrowing! That amounts to potentially in excess of one *billion* dollars in interest that could be going to a much better use – actually deploying or upgrading broadband service.[51] In addition, Letters of Credit are factored into debt-cash ratios when an entity seeks financing, leading to a double-whammy of a higher cost of debt.[52]

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[49] *See id.* at 29, para. 86 (seeking comment on whether any adjustments should be made to the CAF II auction Letter of Credit rules for purposes of the RDOF auction).

[50] *Id.* at 28, para. 86.

[51] *See infra* Appx.

[52] In this regard, while the *NPRM* brushes aside the impact of Letters of Credit on an entity's *ability* to obtain private or public market funding, *see id.* at 29, para. 89 n.170 (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17811, para. 446 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom.*, *In re FCC 11-*

(continued…)

The Commission has recognized the financial burdens associated with Letters of Credit. For example, in the *CAF II Auction Reconsideration Order*, it acknowledged that "the costs for a Letter of Credit in the range of several percentage points, when applied to the sizable amounts that may be awarded to bidders . . . could well be considerable, particularly for smaller bidders."[53] It also allowed that bidders will factor significant Letter of Credit costs into their bids.[54] The heft of these costs, however, contravenes both the *NPRM*'s avowed goals of a cost-effective auction as well as promoting participation and competition in the auction.[55]

Furthermore, the reality of the escalating value of the Letters of Credit as the support term progresses is at odds with the Commission's pronouncements concerning the purported phase-down schedule beginning in Year 5 of the support term. The Commission has touted the supposed phase-down as a "benefit to recipients of potentially decreasing the cost of the Letter of Credit as it becomes less likely that a recipient will default," "[r]ecognizing that the risk of a default will lessen as a recipient makes progress towards building its network," and "tak[ing] into account the substantial performance of the recipient."[56] As discussed above, however, the reality is that the phase-down is a myth. In order to begin to address all of the infirmities associated with the *NPRM*'s Letter of Credit proposal, the Commission, at a minimum, must augment the putative phase-down with additional reductions in the value of Letters of Credit based on capital expended on deployment pursuant to winning bids. The Commission should

(Continued from previous page)
161, 753 F.3d 1015 (10th Cir. 2014)), it does not acknowledge their impact on the *costs* of such financing.

[53] *CAF II Auction Reconsideration Order*, 33 FCC Rcd at 1406, para. 66.

[54] *See id.* at 1407, para. 69.

[55] *See, e.g., NPRM* at 20, para. 55. In addition, even where such costs are factored into bids, doing so still does not address the elevated cost of debt associated with the Letters of Credit.

[56] *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5997-98, paras. 136-37 (2016).

heed "lessons learned" from the CAF II auction,[57] where winning bidders found that obtaining and maintaining a Letter of Credit would "'consume too much of the limited capital available to , , , [and] leave [in]sufficient funds for . . . [CAF Phase II auction] construction.'"[58]

One ITTA member has a net 2.75% cost for a Letter of Credit. Assuming this cost would apply on average to all recipients of the $20.4 billion RDOF, and based on the proposed Letter of Credit requirements in the *NPRM*, total Letter of Credit costs could exceed six percent of total RDOF funding, amounting to more than $1.2 billion. ITTA proposes a revised Letter of Credit obligation, which it believes provides a better cost/benefit value for insuring the RDOF program. The costs of the Letter of Credit under the ITTA proposed would be approximately $454 million, a reduction of over 60 percent of the Letter of Credit costs that would result from the *NPRM*'s proposals.[59]

A lower cost associated with Letter of Credit obligations is likely to increase the number of locations served through the RDOF program by an estimated 375,000, because Letter of Credit costs are known and measureable during the bidding process. Simply put, money spent on banking fees in the amount of $1.2 billion cannot also be spent to bring service to currently unserved and underserved areas, and will therefore result in fewer locations awarded in the RDOF auction.

ITTA proposes that Letter of Credit funding be limited to no more than two years of funding at any time. Year one would cover one year of funding; year two would cover two years of funding: and year three also would cover two years of funding. At the end of year three, each provider will report whether it has achieved its first (40 percent) deployment milestone. After the first milestone report, each RDOF provider that is compliance with the milestone would have

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[57] *See NPRM* at 29, para. 89.

[58] *Id.* at 29-30, para. 89.

[59] *See infra* Appx.

to post a Letter of Credit equivalent to one year of funding. If the RDOF provider has missed the milestone it will still post a one-year Letter of Credit and will be subject to the additional oversight by USAC and the Commission depending on the level of the miss. The RDOF provider will continue to post a one-year Letter of Credit until it reports it has reached 100% of its location requirements. At that point, it can discontinue the Letter of Credit obligation and will only be subject to further LOC requirements if USAC and the Commission determine it has missed its 100 percent milestone by more than five percent.

The Letter of Credit rules will apply to RDOF providers on a state-by-state basis.

ITTA acknowledges that under its proposed Letter of Credit rules, the Commission cannot be 100 percent guaranteed that no funding will be lost. Nevertheless, the Letters of Credit would remain sufficiently funded to balance the need to insure the RDOF program with the risk of loss, and to balance those two factors collectively with the benefits of freeing up capital for providers to serve significantly more locations. As illustrated in the Appendix, adoption of ITTA's alternative Letter of Credit proposal should free up sufficient capital to fund service to approximately 375,000 locations.

E. The Commission Should Ascribe Greater Weighting to High-Latency Bids in the RDOF Auction than it Did in the CAF II Auction

The *NPRM* proposes a weight of 40 for high-latency bids.[60] Although, in the CAF II auction, high latency bids received a weight of 25, functionally placing a weight of 40 for high-latency bids in the RDOF auction is equivalent because, as the *NPRM* notes, with the Commission's proposed elimination of the Minimum performance tier that was an option in the CAF II auction, weighting high-latency bids at 40 would maintain the same 90-point spread

[60] *Id.* at 10, para. 25.

between the best and least performing tiers.[61] The Commission should land at a greater spread by assigning a greater weight than 40 to high latency bids.[62]

As the Commission has found, latency, which measures the time it takes a data packet to travel through the network, is "important for a variety of applications, including VoIP, video calling, distance learning, and online gaming," all of which "may be effectively unusable over high-latency connections, regardless of the download/upload speeds being offered."[63]

"[C]arriers relying on high-latency technologies, such as satellite, must demonstrate that they can provide quality, reliable voice service as a condition of receiving support."[64] In the recently released *Satellite Performance Measures Reconsideration Order,* the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology (Bureaus) upheld their decision in the *Broadband Performance Measures Order*[65] that a conversation-opinion test is the appropriate test to make this demonstration, although they modified several testing contours.[66] In the extensive record leading up to the *Satellite Performance Measures Reconsideration Order*, Hughes, a satellite provider, had cast doubt on

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[61] *See id.*

[62] *See id.* (seeking comment on whether the Commission should increase the 90-point spread between the best and least performing tiers to something higher).

[63] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eleventh Broadband Progress Notice of Inquiry, 30 FCC Rcd 8823, 8835, para. 32 & n.69 (2015).

[64] *Connect America Fund*, Order on Reconsideration, DA 19-911, at 1, para. 1 (WCB/WTB/OET Sept. 12, 2019) (*Satellite Performance Measures Reconsideration Order*).

[65] *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB/WTB/OET 2018) (*Broadband Performance Measures Order*).

[66] *See Satellite Performance Measures Reconsideration Order* at 14, para. 31 n.99 ("in a conversation-opinion test, two participants actively participate in a conversation. The back-and-forth of conversations highlights delay, echo, and other issues caused by latency in a way that one-way, passive listening cannot").

the ability of satellite providers to achieve the required Mean Opinion Score (MOS) of at least 4 to demonstrate quality, reliable voice service, given the Commission's maximum latency threshold to qualify as a high-latency bidder. In so doing, Hughes argued, among other things, that the *Broadband Performance Measures Order* "'should have shown . . . deference to what is "realistic to achieve" given the "technical limitations" of satellite service.'"[67]

Although the Bureaus disagreed with Hughes' arguments that requirements in the *Broadband Performance Measures Order* will make it difficult or impossible for satellite providers to comply with the MOS testing minimum requirements, both the record espousing Hughes' contentions, as well as other findings and outcomes in the *Satellite Performance Measures Reconsideration Order*, militate towards extra caution with respect to high-latency services in the RDOF auction. First, as the Bureaus explain, "[b]ecause MOS testing depends on obtaining test subjects' opinions/ratings, MOS testing is more subjective than technical testing that solely involves obtaining objective measurements."[68] Given the competing claims over whether the requisite MOS score is even achievable by satellite providers under the testing parameters, the subjective nature of such testing further calls into question whether high-latency services will actually meet the performance standards. Second, the high-latency voice quality testing regime that the Bureaus refined in the *Satellite Performance Measures Reconsideration Order* is subject to "protocols that [they] intend to further develop."[69] In light of the substantial dispute ostensibly resolved in the *Satellite Performance Measures Reconsideration Order* having revolved around post-CAF II auction modifications to the testing regime advocated by ViaSat,

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[67] *Satellite Performance Measures Reconsideration Order* at 3, para. 7 (citing Letter from Jennifer A. Manner, Senior Vice President, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1-2 (filed July 16, 2018)).

[68] *Id.* at 8, para. 17.

[69] *Id.* at 7, para. 16.

another satellite provider, the specter of uncertainty regarding the adequacy of high-latency voice quality testing still may be present by the time of the RDOF auction.

Third, unlike required quarterly performance measurements testing of other USF-supported services, the Bureaus only are requiring twice-yearly testing of such voice quality.[70] While ITTA certainly appreciates the Commission minimizing performance testing burdens on providers, as the Bureaus supplied as their rationale for the lesser testing frequency,[71] having half as many tests of voice quality, particularly when the tests are subjective, confers less confidence in the testing regime, especially in the absence of any suggestion that there is no qualitative difference between testing twice annually versus quarterly. And finally, the Bureaus expressed their intention to continue to review an alternative testing methodology proposed by Hughes.[72] Ultimate adoption of this methodology could spawn another hullabaloo over the adequacy of high-latency voice service quality testing, casting a further pall over the viability of such service as contrasted with low-latency services.

In view of all these concerns, the best way to reflect the extra caution warranted with respect to high-latency services in the context of the RDOF auction would be to increase the weighting attributable to high-latency service proposed in the *NPRM*. Adjusting the weighting of high-latency service in this manner will better reflect the risk profile of high-latency services than was done in the CAF II auction.[73]

[70] *See id.* at 9, para. 21.

[71] *See id.*

[72] *See id.* at 10, para. 23.

[73] *Cf. NPRM* at 5, para. 14 ("The approach we take [herein] leverages our experience with the CAF program, and the CAF Phase II auction in particular."); *see also id.* at 22, 27, 29, paras. 65, 80, 89 (all referencing the leveraging of lessons learned from the CAF II auction in designing the RDOF caution); 58, Statement of Chairman Ajit Pai (to get similar results on an even greater scale in the RDOF auction as compared to the CAF II auction, "we'll apply lessons learned from CAF II").

F. All Bidders in the RDOF Auction Should be Subject to the Same Public Interest Obligations

The *NPRM* proposes to adopt technology-neutral standards for the RDOF auction similar to those applied to services supported by the CAF II auction, in light of the Commission's proclaimed success in drawing CAF II auction winning bidders from a variety of types of service providers.[74] It also seeks comment on "whether any alternative . . . performance requirements . . . should be adopted" for recipients of RDOF support, and where such alternatives are proposed, an explanation of how the proposal will balance the objectives of maximizing the limited RDOF budget with "guarding against widening the digital divide by ensuring that rural Americans do not fall further behind those living in urban areas."[75] One way the Commission may achieve these objectives is to ensure that all entities bidding in the RDOF auction are subject to the same pole attachment rules, such that none of these entities may drive up the cost of rural broadband deployment through excessive pole attachment rates in a manner that has the effect of limiting such deployment or unnecessarily raising consumers' costs for broadband.

One ITTA member has chronicled its travails with attempting to secure access to municipal and cooperative electric utility poles on a reasonable and timely basis, and at reasonable rates, in the course of its CAF II broadband deployment efforts, and undoubtedly numerous rural broadband providers have experienced the same obstacles given the high rate of municipal and cooperative electric utility pole ownership in rural areas.[76] It is not uncommon for municipal and cooperative electric utility pole owners to leverage the broadband provider's need for access to their poles to extract other concessions that directly or indirectly escalate broadband deployment costs. CenturyLink states that it has, at times, elected to bury its fiber at

[74] *See id.* at 8, para. 23.

[75] *Id.* at 10, para. 27.

[76] *See* Comments of CenturyLink, WC Docket Nos. 19-26 and 10-90, at Sec. VII (Sept. 20, 2019).

considerable extra expense and delay in order to bypass municipal and cooperative electric utility pole owner obstructionism, leading to deployment inefficiencies.[77]

The solution to this wasteful gamesmanship is for the Commission to establish as a condition of participation in the RDOF auction that any entity bidding in the auction that is not otherwise subject to Section 224 of the Communications Act of 1934, as amended (Act)[78] must voluntarily subject itself to the authority of Section 224 across the entirety of any state in which it bids. Specifically, the Commission should require it to commit to provide access to its poles consistent with the Commission's pole attachment rules. This solution is wholly equitable, insofar as if the entity wants to receive federal subsidies to support its own provision of broadband, it should do so subject to the same public interest obligations of all other bidders, and should not be enabled to inhibit broadband deployment by other entities seeking to achieve it also with the assistance of federal subsidies. It will also promote the Commission's stated goals of adopting technology-neutral standards for the RDOF auction, and potentially limiting the costs of some winning bidders in states where municipal or cooperative electric utilities are winning bidders in other parts of the state.

IV. THE COMMISSION SHOULD NOT ADOPT MEASURES THAT WILL INHIBIT FULFILLMENT OF ITS GOALS FOR THE RDOF AUCTION OR UNDERMINE THE AUCTION'S SUCCESS

A. The Commission Should Decline to Adopt Subscribership Milestones for RDOF Support Recipients

The *NPRM* seeks comment on a proposal to adopt subscribership milestones for RDOF support recipients, posing as an example setting such milestones at 70 percent—the

[77] *See id.*

[78] 47 U.S.C. § 224.

subscribership rate assumed by the CAM—of the annual deployment benchmarks.[79] This proposal suffers from myriad flaws and the Commission should abandon it.

To begin with, the *NPRM* correctly concedes that the impetus for this proposal is based on "theoretical concerns"; in response to the *NPRM*'s question of "whether these theoretical concerns are likely to bear out in reality,"[80] the answer is no.

The *NPRM* speculates that "wireline bidders may lack the proper incentives to serve additional customers in some areas, given that it may not be profitable without a per-subscriber payment to run wires from the street to the customer location and install customer premises equipment."[81] To the contrary, providers have every incentive to attract subscribers. Between deployment milestones and performance requirements that are girded by a compliance framework that encompasses the threat of substantial withholding of support and other penalties,[82] and statutory requirements for support recipients to market their services throughout their service areas,[83] there should be no concerns about wireline ETCs participating in the RDOF auction merely to pocket federal support without actually intending to serve customers.[84] This is particularly true for the auction where the costs to deploy the fiber-based networks necessary to achieve the performance requirements will inevitably exceed the awarded funding. Therefore,

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[79] *See id.* at 15, para. 41.

[80] *Id.* at para. 40.

[81] *Id.*

[82] *See, e.g., id.* at 13, para. 36.

[83] *See id.* at 11, para. 28 (citing 47 U.S.C. § 214(e)(1)(B)).

[84] *Cf. id.* at 16, para. 44 (seeking comment on whether the requirements that a support recipient be prepared to provide service meeting the relevant public interest obligations within 10 business days of request in order to count as a served location, and that an ETC advertise the availability of its services throughout its service area, provide adequate incentives for RDOF support recipients to pursue customers).

the only way for an auction winner to recoup its capital investment is through the revenue generated by subscribers.

Further, ITTA does not grant that it is a "given" that wireline auction support winners will lose money from deployment to customer premises and initializing service. For one thing, the CAM's predicted costs are premised on the balancing between potential end-user revenue and USF support properly incentivizing deployment.[85] In fact, ITTA believes that potential fail points in that equation, if any, are largely attributable to overinflated take rate estimates built into the CAM.[86] In addition, as ITTA and others have contended, once an entity receiving USF support has constructed in its service area the network to provide broadband meeting the Commission's performance obligations, the incremental cost of reaching each particular location is fractional.[87] Simply put, concerns about wireline bidders gaming the RDOF in the suggested manner blow past "theoretical" to the doorstep of paranoid. Correspondingly, concerns about "redlining" by wireline bidders are unavailing, as they are not subject to the same capacity constraints that providers using some other technologies may be.

Adoption of any subscribership milestone -- let alone the suggested proposal to set such milestones at 70 percent of the yearly deployment benchmarks -- is misguided and a recipe for failure. Commission data evince a clear inverse relationship between rurality of an area and subscribership rates at 25/3 Mbps service. For instance, in the *2019 Broadband Deployment Report*, counties in the quartile with the highest rural population rate demonstrated a 25/3 Mbps broadband subscribership rate of 23.1 percent, *less than one-third* of both the CAM's assumed subscribership rate and the subscribership rate on which the *NPRM* seeks comment as the

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[85] *See id.* at 19, para. 51.

[86] *See supra* Sec. III.C.

[87] *See* Comments of ITTA, WC Docket No. 10-90, at 4 (July 19, 2019) ("the vast majority of deployment costs are devoted to the broadband network as a whole in the service area, with relatively few incremental per-location costs, e.g., attributable to individual drops").

required milestone.[88] In addition, as deployment of 5G expands over the next decade, wireline broadband subscribership rates will likely decline nationwide, making any reliance on subscribership milestones set based on assumptions envisioned a decade ago entirely unrealistic. Therefore, it does not take a mathematical genius to conclude that a 70 percent subscribership milestone would be beyond ambitious to the point of untenable.[89] Moreover, even at a lower subscribership rate,[90] the bottom line is that adoption of subscribership milestones would depress interest in the RDOF auction, because potential bidders would find them too risky.[91]

In sum, after the success of the CAF II auction, it would be counterproductive and foolhardy for the Commission to encumber and likely doom the RDOF auction with these additional requirements which, at least in the wireline context, have no grounding in realistic concerns. The Commission should refrain from adopting them.

[88] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, 34 FCC Rcd 3857, 3887, Fig. 13, Average County Overall Adoption Rate for Fixed Terrestrial Services by County Level Demographic Variable (as of December 31, 2017) (2019) (*2019 Broadband Deployment Report*). Tellingly, even counties in the quartile with the lowest rural population rate witnessed a 25/3 Mbps broadband subscribership rate of 57.7%, and a 10/1 Mbps subscribership rate of 67.3%. *Id.* These figures speak for themselves as evidence of the "particular challenges associated with marketing and encouraging broadband adoption in rural areas that the Commission should consider in evaluating a subscription benchmark." *NPRM* at 16, para. 44.

[89] To the extent that the RDOF auction will be geared towards "reaching those hardest-to-serve communities," *NPRM* at 62, Statement of Commissioner Brendan Carr, there can be no reasonable expectation of RDOF auction subscribership rates meaningfully eclipsing those portrayed in the *2019 Broadband Deployment Report* for the two quartiles with the highest rural population rates.

[90] *See id.* at 15, para. 41 (seeking comment on whether a subscribership rate that is lower than 70% would be more appropriate to account for the unique challenges of serving rural areas).

[91] *Cf. id.* at 16, para. 44 (seeking comment on whether additional performance targets such as subscribership milestones will deter service provider participation in the RDOF auction).

B. The Commission Should Include in Phase I of the RDOF Auction All Locations in Census Blocks in Which the Price Cap Carrier Receiving Model-Based Support is the Only Provider Having Deployed 25/3 Mbps Service to Portions of those Blocks

The *NPRM* proposes to exclude from Phase I of the RDOF auction those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service,[92] but notes one caveat: it also proposes to treat price cap carriers differently from other providers in the areas where they have received model-based support.[93] This makes eminent sense in light of the *NPRM*'s rationale that the Commission already has more granular location availability data from such carriers, via their reporting of geocoded served locations to USAC through the HUBB Portal.[94] Thus, ITTA generally supports the *NPRM*'s proposal to include in Phase I of the RDOF auction census blocks in which the price cap carrier receiving model-based support is the only terrestrial provider having deployed 25/3 Mbps broadband service in that block, however, all census blocks included in the price cap carrier model-based support awards should be included in Phase I of the RDOF auction.[95]

In this regard, ITTA opposes the *NPRM*'s proposal to exclude from Phase I of the RDOF auction census blocks where the price cap carrier is providing 25/3 Mbps service to all locations.[96] To exclude locations to which a price cap carrier has already deployed 25/3 Mbps service is contrary to the original CAF II model-based support awards, which were premised on the understanding that all of these blocks would be eligible for the subsequent auction.[97] It also

[92] *See id.* at 18, para. 48.

[93] *See id.* at para. 49.

[94] *See id.*

[95] *See id.*

[96] *See id.* at 18, para. 49 n.95.

[97] *December 2014 CAF Order*, 29 FCC Rcd at 15656, para. 31: "We continue to believe that we should move to competitive bidding processes in a timely manner in those areas where support initially is awarded through the acceptance of state-level commitments."

would perversely penalize price cap carriers that exceeded their deployment obligations, by imposing a flash cut in support – which likewise threatens substantial consumer harm.[98]

Similarly, ITTA disagrees with the *NPRM*'s proposal to remove from the RDOF auction individual locations reported as served by 25/3 Mbps broadband in price cap model-based census blocks where the price cap carrier has deployed 25/3 Mbps service only to some locations in those census blocks.[99] Instead, all locations in such census blocks should be included in the RDOF auction with the auction participants allowed to bid to upgrade 10/1 Mbps service locations or 25/3 Mbps service locations to higher performance tiers. This would be a win-win insofar as it would efficiently and cost-effectively lead to locations already reported as served by 25/3 Mbps service receiving higher speeds than the 25/3 Mbps minimum contemplated for the RDOF auction.

V. THE COMMISSION SHOULD PROVIDE FOR ADEQUATE TRANSITIONAL SUPPORT FOR PRICE CAP CARRIERS HAVING RECEIVED CAF II MODEL-BASED SUPPORT

The *NPRM* acknowledges the Commission's prior decision that price cap carriers that do not win in the auction or choose not to bid would have the option of electing one additional year of CAF II model-based support through calendar year 2021.[100] It then seeks comment on whether to revisit the transition period from CAF II model-based support to RDOF support "[g]iven that a[n RDOF] auction is unlikely to conclude before model-based support for price cap carriers is expected to end."[101] As a threshold matter, for the timing reason espoused, ITTA replies with a resounding "yes."

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[98] *See infra* Sec. V.

[99] *See NPRM* at18, para. 49.

[100] *See id.* at 32-33, para. 100.

[101] *Id.* at 33, para. 101.

First, the *NPRM* specifically seeks comment on whether *all* price cap carriers should have the option to elect an additional year of support.[102] The rationale suggested by the Commission itself militates towards an obvious affirmative. As the *NPRM* reasons, while the optional support year was originally envisioned to be limited just to those price cap carriers that do not win or bid in the auction, by the end of 2020, when the CAF II model-based support program ostensibly should end for the bulk of price cap carriers, the Commission likely will not know which price cap carriers fall in those categories.[103]

For similar reasons, however, ITTA opposes the Commission's view that it is not necessary to provide transitional support to price cap carriers beyond the optional seventh year of support.[104] The Commission's justification for that view – price cap carriers accepted CAF II model-based support without an expectation of sustained ongoing support[105] – is a red herring.[106] Changed circumstances demand a changed approach.[107] Even in the highly unlikely event the

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[102] *See id.*

[103] *See id.* Given the strong justification for providing an additional year of support for all price cap carrier recipients of CAF II model-based support, the *NPRM*'s line of questioning regarding how the Commission should adjust the offer of an optional seventh year of support is inapposite. *But see id.* at para. 103. Likewise, price cap carriers should not be subject to any additional obligations as a condition of receiving the additional year of support. *See id.*

[104] *But see id.* at para. 102.

[105] *See id.*

[106] In fact, carriers accepted the model-based support based on the understanding that they would have the opportunity to bid in the future auction on funding to upgrade service in the areas where they receive model-based support. *See supra* note 97 and accompanying text.

[107] There is a very compelling argument that continuing support beyond 2021 was actually contemplated by the Commission when it launched the CAF program in the *USF/ICC Transformation Order*. As the *NPRM* recognizes, in that order the Commission indicated that if an auction had not been implemented by the end of the CAF II model-based support term, the price cap carriers receiving such support would "be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support." *Id.* at 17727, para. 163; *see NPRM* at 33, para. 100 n.190. An examination of the *USF/ICC Transformation Order* reveals that what the Commission intended by "implementation" of a competitive bidding mechanism by the end of the CAF II model-based

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Commission is successful in completing the RDOF auction before the end of 2020, the subsequent review of long-form applications and other processes leading to winning bidders beginning to receive RDOF auction support likely will extend far enough into 2021 that very little deployment utilizing that funding realistically will occur prior to the end of calendar year 2021.

A flash cut in price cap carrier support is decidedly not in the public interest. The Commission long has recognized that sudden cuts in carriers' support can harm consumers and potentially lead to their loss of service, outcomes that by their very nature contravene the public interest. For instance, the Commission has declared that it "generally prefers to avoid flash cuts in support that would dramatically affect consumers"[108] or carriers.[109] It also has "sought to

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support term was that "[a]fter the end of the . . . term of CAF Phase II, the Commission expects to be distributing all CAF support in price cap areas pursuant to a market-based mechanism, such as competitive bidding." *USF/ICC Transformation Order*, 26 FCC Rcd at 17726-27, para. 163. Given the Commission's realistic concession that the RDOF auction is unlikely to conclude before the CAF II model-based support term ends at the end of 2020, it is a foregone conclusion that distribution of all support will not occur by the end of 2020 pursuant to the RDOF auction mechanism.

However, the additional stipulation that ongoing CAF II support would be contingent on price cap carrier recipients of such support "continu[ing to] provid[e] broadband" with performance characteristics reasonably comparable to those in urban areas, *see id.* at 17727, para. 163, is a charming artifact with the benefit of eight years' hindsight. At the time, the Commission contemplated that CAF II model-based support recipients would be required to offer 4/1 Mbps service, with some locations stretched to 6/1.5 Mbps, and that this would be reasonably comparable to terrestrial fixed broadband service in urban America. *See id.* at 17726, para. 160. Translating this stipulation to 2020 reality, the Commission in the *USF/ICC Transformation Order* provided for ongoing CAF II support in exchange for price cap carrier CAF II model-based support recipients continuing to provide the level of service they have been during the CAF II model-based support term. *See NPRM* at 5, para. 14 ("acknowledg[ing] that market realities have changed since the CAF framework was first established in 2011").

[108] *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7067, para. 50 (2014) (*April 2014 Connect America Report and Order*).

[109] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17752, para. 242.

phase in reform with measured but certain transitions, so companies affected by reform have time to adapt to changing circumstances."[110]

In many cases, a flash cut of price cap carrier support where another entity places a winning bid for the price cap carrier's service area in the overlap auction will lead to either of two highly unpalatable outcomes: either the price cap carrier will exit the market, or, more likely, the price cap carrier will be forced to dramatically raise prices for its existing customers. The former case threatens the scenario where customers lose access to existing voice and/or broadband service prior to the deployment of service to those locations by the winning bidder.[111] The latter scenario flies in the face of the Commission's duties under the Act to ensure that "[q]uality services . . . [are] available at just, reasonable, and affordable rates,"[112] and that "consumers . . . in rural, insular, and high cost areas . . . have access to telecommunications . . . and advanced telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."[113] Neither scenario is in the public interest.

To avoid these harms, the Commission should provide transitional support to the price cap carrier where another entity places a winning bid for the price cap carrier's service area in the RDOF auction. Specifically, the Commission should provide support to the price cap carrier at the support level of the winning bidder for the particular service area until the winning bidder is able to serve all locations currently served by the price cap carrier. This will fulfill the Commission's goals of ensuring that consumers retain access to voice and broadband services

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[110] *Id.* at 17671, para. 11.

[111] At least one ITTA member has contracted with a wireless provider to make CAF II connections to the most remote and difficult-to-serve locations. In the event transitional funding is not provided, it is likely these arrangements would be terminated.

[112] 47 U.S.C. § 254(b)(1).

[113] *Id.* § 254(b)(3).

during the transition to RDOF support,[114] and also provide ongoing support at a cost-effective level as demonstrated by the amount of the winning bid. Relatedly, if no entity bids on census blocks partially served by price cap carriers that are eligible for Phase I of the RDOF auction, those census blocks should be relegated to Phase II of the auction, and price cap carriers currently serving those census blocks should continue to receive full ongoing support at their CAF II model-based support levels.[115]

VI. CONCLUSION

The Commission should begin with framing the RDOF auction in the same mold as the CAF II auction. However, given the much larger scope of the RDOF auction, as well as lessons learned from the CAF II auction and other existing USF high-cost funding programs, there are several areas where the Commission should tweak its RDOF auction procedures relative to those utilized for the CAF II auction. There are also certain proposals, such as subscribership milestones, that the Commission should refrain from adopting in order to not condemn the RDOF auction to failure. And once the auction is complete, the Commission should ensure that

[114] *See NPRM* at 33, para. 104.

[115] *See id.* (seeking comment on whether there are any other issues that the Commission should address in the context of this proceeding that will facilitate the transition from CAF II model-based support to RDOF support). Notably, the *NPRM* did not seek comment on transition issues related to the case of there being no winning bidder for certain census blocks eligible for Phase I of the RDOF auction.

Another measure the Commission should address to facilitate the transition to RDOF support, and the exit of the price cap carrier from the service area where it is not the winning bidder and chooses to no longer provide service absent support, is an expedited discontinuance process pursuant to Section 214 of the Act, 47 U.S.C. § 214. *Cf. Connect America Fund*, Report and Order, FCC 19-8, Statement of Commissioner Michael O'Rielly (2019) ("it doesn't strike me as particularly fair to maintain price cap carriers' unfunded mandate with respect to their high-cost and extremely high-cost areas. It is incumbent on us to ensure that price cap carriers' obligations are not indefinite").

a proper transition framework is in place that will not leave consumers stranded without service or suddenly paying significantly more for service.

Respectfully submitted,

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APPENDIX:
ILLUSTRATIVE BENEFITS OF ITTA LETTER OF CREDIT (LOC) PROPOSAL

RDOF Amt. *2,040,000,000*
LOC cost *2.75%*

Cost of LOC based on *NRPM* LOC mechanism:

Year	LOC Mult.	RDOF Funding	LOC Amount	Milestone LOC Discount	LOC Cost	Build out Obligations	LOC Cost as % of RDOF
1	1	2,040,000,000	2,040,000,000		56,100,000		2.75%
2	2	2,040,000,000	4,080,000,000		112,200,000		5.50%
3	3	2,040,000,000	6,120,000,000		168,300,000	40%	8.25%
4	4	2,040,000,000	8,160,000,000		224,400,000	60%	11.00%
5	5	2,040,000,000	10,200,000,000[i]	10%	252,450,000	80%	12.38%
6	6	2,040,000,000	12,240,000,000	40%	201,960,000	100%	9.90%
7	7	2,040,000,000	14,280,000,000	40%	235,620,000		11.55%
8		2,040,000,000			-		0.00%
9		2,040,000,000			-		0.00%
10		2,040,000,000			-		0.00%
Total		20,400,000,000			1,251,030,000		6.13%

Assumed rate of 2.75% for LOC.
LOC for Year 7 assumes USAC and FCC take a full year to verify locations and release companies from LOC obligations.
The LOC is discounted by 10% after 60% build-out and by 40% after 80% build-out. *See NPRM* para. 86.

Cost of LOC based on ITTA proposed LOC mechanism:

Year	LOC Mult.	RDOF Funding	LOC Amount	Milestone LOC Discount	LOC Cost	Build out Obligations	LOC Cost as % of RDOF
1	1	2,040,000,000	2,040,000,000		56,100,000		2.75%
2	2	2,040,000,000	4,080,000,000		112,200,000		5.50%
3	2	2,040,000,000	4,080,000,000		112,200,000	40%	5.50%
4	1	2,040,000,000	2,040,000,000		56,100,000	60%	2.75%
5	1	2,040,000,000	2,040,000,000[ii]	10%	50,490,000	80%	2.48%
6	1	2,040,000,000	2,040,000,000	40%	33,660,000	100%	1.65%
7	1	2,040,000,000	2,040,000,000	40%	33,660,000		1.65%
8		2,040,000,000			-		0.00%
9		2,040,000,000			-		0.00%
10		2,040,000,000			-		0.00%
Total		20,400,000,000			454,410,000		2.23%

Assumed rate of 2.75% for LOC.
LOC for Year 7 assumes USAC and FCC take a full year to verify locations and release companies from LOC obligations.
The LOC is discounted by 10% after 60% build-out and by 40% after 80% build-out. *See NPRM* para. 86.

Estimate of Locations that could be funded in RDOF, under the ITTA LOC Proposal, based on CAF II Auction results:

	CAF II Auction Results	
Funding	1,488,000,000	
Locations	700,000	
Average Funding per location	2,125.71	
Estimated LOC Cost under *NPRM*:		1,251,030,000
Estimated LOC Cost under ITTA Proposal:		454,410,000
Reduced LOC Costs:		796,620,000
Potential Additional Funded Locations: (Reduced LOC Cost/Estimated Funding per location)		374,755

[i] The *NPRM* specifies that the phase-down percentages later in the deployment term will be applied to "the total support amount already disbursed plus the amount that will be disbursed in the coming year." *NPRM* at 29, para. 86. This statement is subject to two very different interpretations. In the unfortunate event the Commission retains this LOC paradigm, it must clarify whether the percentage reductions apply only two already-disbursed amounts, or to the sum of already-disbursed amounts and the amount to be disbursed in the coming year. Here we assume the latter interpretation.

[ii] Both here and with respect to the *NPRM* LOC mechanism, applying the 10% "discount" to the Year 5 LOC, and the 40% "discount" to the Years 6 and 7 LOCs, is premised on literal readings that these phase-down percentages will apply "once the auction recipient has met" its respective 60% or 80% deployment milestone. *Id.* at 28-29, para. 86. And, in fact, the Commission previously has suggested that these discounts would become effective immediately. *CAF II Auction Reconsideration Order*, 33 FCC Rcd at 1406, para. 65.("Because we require recipients to submit the geocoded locations that count towards their service obligations in an online portal with built-in validations, USAC will be able to quickly verify that a recipient's 80 percent service milestone has been met, thereby enabling the recipient to reduce the value of its letter of credit."). If, however, reality is such that the following year's LOC must be obtained before USAC has verified compliance with deployment milestones, that will cause the 10% discount to not apply until the Year 6 LOC, and the 40% discount to not first apply until the Year 7 LOC. These delays, of course, will increase the LOC costs further.